

ABANDONED SHIPWRECK ACT OF 1987

DECEMBER 9 (legislative day, DECEMBER 8), 1987.—Ordered to be printed

Mr. JOHNSTON from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 858]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 858) to establish the title of States in certain abandoned shipwrecks, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Abandoned Shipwreck Act of 1987"

SEC. 2. FINDINGS.

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(a) the term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) the term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) the terms "public lands," "Indian lands" and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

(d) the term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) the term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) the term "submerged lands" means the lands—

(1) that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

SEC. 4. RIGHTS OF ACCESS.

(a) ACCESS RIGHTS.—In order to—

(1) clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act,

it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) protect natural resources and habitat areas;

(B) guarantee recreational exploration of shipwreck sites; and

(C) allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) PARKS AND PROTECTED AREAS.—In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

SEC. 5. PREPARATION OF GUIDELINES.

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) maximize the enhancement of cultural resources;

(2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) facilitate access and utilization by recreational interests;

(4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

SEC. 6. RIGHTS OF OWNERSHIP.

(a) UNITED STATES TITLE.—The United States asserts title to any abandoned shipwreck that is—

(1) embedded in submerged lands of a State;

(2) embedded in coralline formations protected by a State on submerged lands of a State; or

(3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) **TRANSFER OF TITLE TO STATES.**—The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) **EXCEPTION.**—Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) **RESERVATION OF RIGHTS.**—This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

SEC. 7. RELATIONSHIP TO OTHER LAWS.

(a) **LAW OF SALVAGE AND THE LAW OF FINDS.**—The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) **LAWS OF THE UNITED STATES.**—This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) **EFFECTIVE DATE.**—This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 858 is to vest title to certain abandoned shipwrecks that are buried in State lands to the respective States and clarify the management authority of the States for these abandoned shipwrecks.

BACKGROUND AND NEED

The central issue underlying this legislation is the ownership and the authority to manage abandoned shipwrecks on State lands. Currently, States claim title to and regulatory authority over abandoned historic shipwrecks. However, the Federal Admiralty Court has also claimed jurisdiction over these resources, creating confusion over ownership of the resource and in some cases resulting in inadequate protection of historical artifacts.

The Submerged Lands Act of 1953 gave the States title to the "land and natural resources" within 3 miles of their coasts. The States have contended that "lands and natural resources" include abandoned shipwrecks. Since the 1950's, the States have managed historic shipwreck archaeological sites as part of their historic preservation programs. In addition, 27 States have established specific laws regulating abandoned historic shipwrecks. The laws differ by State, but none prohibit sport diving on historic shipwrecks and about half of the laws provide for compensation for recovery activities undertaken by private parties.

Federal Admiralty Court and the admiralty system, which have their roots in English history and common law, were developed to deal with the recovery or salvage of goods lost at sea. The Admiralty Court makes a determination of a salvage award and ownership of a shipwreck depending on success in recovering the vessel or cargo, the danger present in the rescue, the value of the property recovered, and the time and labor expended by the salvor. Such a

determination for historic shipwrecks often times does not consider the archeological, historical, and other values associated with these wrecks which would preserve part of our nation's heritage.

This legislation would clarify that situation by asserting Federal ownership over these shipwrecks and then transferring title to the States for administration, management, and regulation.

LEGISLATIVE HISTORY

S. 858 was introduced by Senator Bradley on March 26, 1987. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 29, 1987.

At a business meeting on December 2, 1987, the Senate Committee on Energy and Natural Resources ordered S. 858, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on December 2, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 858, if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS

NAYS

Mr. Johnston
Mr. Bumpers
Mr. Ford *
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Fowler
Mr. Conrad
Mr. McClure
Mr. Hatfield
Mr. Weicker
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans

*Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 858, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and some substantive changes. A discussion of those substantive differences follows. Additional information on the substitute is included in the "Section-by-Section Analysis" of this report.

1. Findings and definitions

The substitute clarifies that "abandoned shipwrecks", refers to those shipwrecks which have been deserted and to which all ownership rights have been relinquished. It also expands the definition of "embedded" to include the requirement that tools of excavation would have to be used to gain access to the shipwreck.

2. Guidelines

The substitute changes the authority for promulgation of the guidelines from the Advisory Council on Historic Preservation to the Secretary of the Interior, acting through the Director of the Park Service. In preparing the guidelines, the Secretary is required to consult with a variety of interests, including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archaeologists, historic preservationists, and fishermen. The guidelines were expanded to include the recognition of the interests of those engaged in shipwreck discovery and salvage. The purpose of these changes was to broaden the focus of the guidelines from primarily historic preservation to include the consideration of recreational and commercial interests as well.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for S. 858, the "Abandoned Shipwreck Act of 1987".

Section 2 includes a set of Congressional findings.

Section 3 contains definitions of key terms in the Act.

Section 4 sets forth the general responsibilities of the States under this Act. The States are directed to develop policies to protect shipwrecks, guarantee recreational exploration of shipwreck sites, and allow for recovery of shipwrecks which are consistent with the protection of historical and environmental values. This section also encourages the States to create underwater parks to give further protection of these resources.

Section 5 provides for advisory guidelines to be developed by the Secretary of the Interior, acting through the Director of the National Park Service. The purpose of the guidelines is to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out the purposes of the Act. The guidelines are intended to enhance cultural resources; foster a partnership among a variety of parties including sport divers, fishermen, archaeologists and salvors; facilitate access by recreational users; and recognize the interests of those engaged in shipwreck discovery or salvage.

Section 6 asserts that title to certain abandoned shipwrecks vests in the United States. These shipwrecks include those which are embedded in the submerged lands of a State, are located on coral-line formations protected by a State or have been determined to be eligible for inclusion in the National Register. Notice of the location of these shipwrecks are to be provided to the public.

The purpose of providing notice to the public is to ensure that sport divers and others seeking to use abandoned shipwrecks know that wrecks have been found to be historically significant. The

need to give such advance notice must be balanced, however, against the danger that notice of location will lead to damage and pilferage.

Accordingly, it is expected that the degree of specificity with which such wrecks are located in public notices will vary from circumstance to circumstance. The Committee concurs that appropriate public notice of the site location may be accomplished in many different ways, including notice in the Federal Register, the marking of charts, a site marker, notice in local newspapers or diving information centers. The specificity of such notice may vary, and may be accomplished by other means, such as the 1-mile lease-tract method used by some States for off-shore oil and gas leases.

The title of those abandoned shipwrecks which meet the specified criteria outlined above are to be transferred to the appropriate State. The United States retains title only if the shipwreck is located on public lands, and any shipwrecks located on Indian lands is the property of Indian tribe owning the land.

There are some units of the National Park System where abandoned shipwrecks are found on lands which are owned by the United States, for example at Biscayne National Park in Florida. Section 6(d) would ensure that the United States retains title to these shipwrecks. In other park units, however, the submerged lands within the park boundaries are owned by the State. Section 6(c) would transfer title to these shipwrecks to the States.

The Committee is concerned that historic shipwrecks within national park boundaries be preserved, regardless of whether they lie in State or Federal waters. Accordingly, the Committee encourages the National Park Service and the States to enter into management agreements whereby any historic shipwrecks within national park boundaries will be protected by the National Park Service. The Committee expects the guidelines issued pursuant to section 5 to reflect this need to manage historic resources within park boundaries consistently.

Section 7 describes the relationship of the Abandoned Shipwrecks Act to other laws. In particular, the Law of Salvage and the Law of Finds do not apply to shipwrecks described in section 6.

The Committee recognizes that the management of long-submerged and abandoned shipwrecks now presents concerns far removed from the traditional admiralty interests in safety and in returning goods to the streams of commerce. As new technologies have allowed the recovery of wrecks that have been lost for long periods of time, a new concern has been developed for the historic and recreational interests in shipwrecks. Shipwrecks are no longer viewed as only lost commercial resources that should be salvaged so that the goods can be returned to commerce. Rather, many shipwrecks are now used as recreational resources for sport divers and fishermen and are viewed as invaluable and irreplaceable archeological resources.

The archeological and recreational interests require that certain shipwrecks be managed by entities with experience in these areas and a broad concern with historic and recreational resources as well as an awareness of the unique needs of their local resources. It is no longer appropriate for the admiralty courts to adjudicate these interests based on traditional admiralty concerns. Admiralty

courts remain best equipped to deal with issues essential to a national maritime jurisdiction, primarily the adjudication of commercial interests, as would be present in the wreck of ships that are currently engaged in commerce and their cargo.

The States and the Federal Government, both of which have extensive experience in recreational and historic site management as well as broad interests in a range of other historic and recreational resources, should manage the shipwrecks covered by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 1987.

Hon. J. BENNETT JOHNSTON, JR.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 858, the Abandoned Shipwreck Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, December 2, 1987. We estimate that this bill would have no significant impact on the budget of the federal government, or of state or local governments.

S. 858 would assert federal title to certain abandoned shipwrecks and would transfer title to the state on whose submerged lands the shipwreck is located, unless the shipwreck lies within the boundaries of lands administered by the National Park Service (NPS). This bill would also direct the NPS to develop guidelines on managing shipwrecks and providing public access. Neither the NPS nor the affected states are expected to incur significant additional costs as a result of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 858. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 858, as reported.

EXECUTIVE COMMUNICATIONS

On September 22, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior, the National Oceanographic and Atmospheric Administration and the Office of Management and Budget setting forth executive views on S. 858. These reports had not been received at the time the report on S. 858 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 858, as reported.

